

DISPATCH

CLASSIFICATION

CONFIDENTIAL

ORIGINATOR'S REQUEST FOR HQS. PROCESSING

TO

Chiefs of Station and Base

INFO.

Chiefs of OC Regional Areas

FROM

Chief, [REDACTED]

SUBJECT

Overtime Provisions of Fair Labor Standards Act

ACTION REQUIRED - REFERENCES

1. PL 93-259, 8 April 1974, amended the Fair Labor Standards Act (FLSA) of 1938 and brought all Federal agencies under the Act. The effective date was 1 May 1974.

2. The overtime provisions of the Act as amended apply to all employees, including contract employees, who are not designated as exempt. Employees in foreign areas are exempt. In the Organization's implementation of the provisions, managers or supervisors who plan work, assign work, review results, and rate employees are exempt; administrative and professional employees, other than clerical and technical, above GS-8 are in most cases exempt; most technical employees above GS-12 are exempt; all clerical employees, including secretaries (unless supervisors), and administrative, professional and technical employees up to the grades noted above, unless supervisors, are non-exempt.

3. All Organization employees have been designated exempt or non-exempt consistent with the above rules. Employees in the United States will be individually notified of their designation. While all employees in foreign areas are exempt, even though their position is non-exempt in nature, upon their return to Headquarters PCS or TDY they will be notified of their exempt/non-exempt designation. A record of the designation, and of any subsequent designation in connection with reassignments, will be placed in the employee's personnel folder at Headquarters.

4. Overtime for non-exempt employees must be paid for all hours actually worked over 40 in a week, including any which the employer suffers or permits to be performed even though not officially ordered or approved. Non-exempt employees must be paid for overtime worked; compensatory time may not be substituted. If during a workweek an employee, who qualifies as non-exempt under the general rules but is exempt because assigned in a foreign area, performs any work in the United States or its territories, all overtime work performed during that workweek, whether in the United States or in a foreign area, is qualified for overtime payment under the Fair Labor Standards Act. The component for which TDY is performed is responsible for ensuring that any overtime worked is correctly reported, but an employee who knows or presumes that he qualifies for overtime compensation may wish to call attention to that fact.

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CROSS REFERENCE TO

DISPATCH SYMBOL AND NUMBER

DATE

22 August 1974

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CONTINUATION OF DISPATCH	CLASSIFICATION CONFIDENTIAL	DISPATCH SYMBOL AND NUMBER
<p>5. The overtime rate for a non-exempt employee is not less than one and one-half times the employee's regular rate of pay, which is determined by including such additional payments as night differential, Sunday premium pay, environmental differential or hazard pay, and certain post differentials (other than foreign). For overtime purposes, a non-exempt employee is entitled to the higher of the amounts due under applicable pay laws for each workweek. This means that, when overtime is worked, the employee's pay must be computed on a weekly basis under present rules and under FLSA, with the higher amount being paid. Entitlements will continue to be paid on a biweekly basis. Since it will take a considerable time to make necessary adjustments in payroll procedures to accommodate FLSA, for the time being, overtime entitlements under FLSA in excess of Organization overtime pay will be accumulated for payment at a later date.</p>		25X1A
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		PAGE NO. 2

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DRAFT BOOK DISPATCH

TO : Chiefs of Station and Base

FROM : Chief,

SUBJECT: Overtime Provisions of Fair Labor Standards Act

1. PL 93-259, 8 April 1974, amended the Fair Labor Standards Act (FLSA) of 1938 and brought all Federal agencies under the Act. The effective date was 1 May 1974.

2. The overtime provisions of the Act as amended apply to all employees who are not designated as exempt. Managers or supervisors who plan work, assign work, review results, and rate employees are exempt. Administrative and professional employees, other than clerical and technical, above GS-8 are in most cases exempt. Most technical employees above GS-12 are exempt. All clerical employees, including secretaries (unless supervisors), and administrative, professional and technical employees up to the grades noted above, unless supervisors, are non-exempt.

3. All Organization employees have been designated exempt or non-exempt consistent with the above rules. Employees in the United States will be individually notified of their designation. While all employees in foreign areas are exempt, even though their position is non-exempt in nature, upon their return to Headquarters PCS or TDY they will be notified of their exempt/non-exempt designation. A record of the designation, and of any subsequent designation in connection with reassignments, will be placed in the employee's personnel folder at Headquarters.

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4. Overtime for non-exempt employees must be paid for all hours actually worked over 40 in a week including any which the employer suffers or permits to be performed, even though not officially ordered or approved. Non-exempt employees must be paid for overtime worked;

compensatory time normally may not be substituted. If during a workweek *an employee who qualifies for non-exempt status under the general rule* a non-exempt employee performs any work in the United States or its territories, all overtime work performed during that workweek, whether in the United States or in a foreign area, is qualified for overtime payment under the Fair Labor Standards Act.

5. The overtime rate for a non-exempt employee is not less than one and one-half times the employee's regular rate of pay, which is determined by including such additional payments as night differential, Sunday premium pay, environmental differential or hazard pay, and certain post differentials (other than foreign). For overtime purposes, a non-exempt employee is entitled to the higher of the amounts due under applicable pay laws for each workweek. This means that, when overtime is worked, the employee's pay must be computed on a weekly basis under present rules and under the FLSA, with the higher amount being paid.

6. An employee who is exempt only because serving in a foreign area *but who would otherwise qualify for non-exempt status* will be non-exempt during a period of TDY in our country *or in a territory* unless the job performed during TDY is in the exempt category. The component for which TDY is performed is responsible for ensuring that any overtime worked is correctly compensated, but an employee who knows or presumes that he is non-exempt may wish to call attention to this fact when reporting for TDY.

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The Executive Exemption applies to managers or supervisors who plan work, assign work, review results, and rate employees. The Administrative Exemption and the Professional Exemption apply to most Agency employees other than clerical and technical. Such employees are in most cases exempt above GS-08. All clerical employees, including secretaries (except for supervisors) are non-exempt. Most technical employees (except for supervisors) are non-exempt through GS-12.

All Agency employees have been designated exempt or non-exempt consistent with these rules. While all employees in foreign areas are exempt, upon their return to headquarters TDY or PCS, they will be given a written statement of their exempt/non-exempt status. Any work performed by a non-exempt employee regardless of duration, in the United States or territories, is qualifying for overtime under the Fair Labor Standards Act, if any overtime is worked at headquarters or in the foreign area during the week.

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TO : Chiefs of Station and Base
FROM : Chief,
SUBJECT: Overtime Provisions of Fair Labor Standards Act

1. PL 93-259, 8 April 1974, amended the Fair Labor Standards Act (FLSA) of 1938 and brought all Federal agencies under the act. The effective date was 1 May 1974.

2. The overtime provisions of the Act as amended apply to all employees who are not specifically designated as exempt. Exempt employees include certain employees in executive, administrative and professional positions and all employees serving in foreign areas.

3. Overtime for nonexempt employees must be paid for all hours actually worked over 40 in a week which the employer "suffers or permits" to be performed. Thus overtime for these employees need not be officially ordered or approved. The supervisor must not permit nonexempt employees to report early and perform work or voluntarily stay after hours to work without compensation. Nonexempt employees must be paid for overtime worked; compensatory time may not be substituted.

Can we help in any way or omit

Normally

4. The overtime rate for a nonexempt employee is not less than one and one-half times the employee's regular rate of pay which is determined by including such additional payments as night differential, Sunday premium pay, environmental differential or hazard pay, and certain post differentials (other than foreign).

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5. A nonexempt employee, for overtime purposes, is entitled to ^{higher of the amounts due} the highest rate he will receive under applicable pay laws, ^{for each work week}. This means that ^{pay for overtime work} his rate must be computed both under present rules and under the FLSA with the ^{sum of the} higher amount, ^{for each week} being paid on a ^{biweekly basis}.

6. Headquarters is currently determining which employees are exempt and which are nonexempt. When this determination has been completed, ^{and employees} Chiefs of Station and Base will be notified. This is necessary since an employee who is exempt because employed in a foreign area, but who would be nonexempt if performing the same job in our country, would be nonexempt during a period of temporary duty in our country. ~~Upon return from a foreign area and assignment to a position in our country, an employee will be designated as exempt or nonexempt and so informed.~~

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